

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

BODIE JAMES DAVIS,

Petitioner,

No. 01-CV-10202

v.

**HON. DAVID M. LAWSON
District Judge**

THOMAS BIRKETT,

Respondent.

**HON. R. STEVEN WHALEN
Magistrate Judge**

/

**OPINION AND ORDER DENYING MOTION TO
DESIGNATE RULE 5 MATERIALS**

Petitioner has filed a Motion to Designate Rule 5 Materials [Docket #50], which is, in essence, a motion to expand the record under Rule 7 of the Rules Governing §2254 cases. He has submitted for the Court's consideration a copy of a letter/memorandum from the Justice Department to the Corporation Counsel for the City of Detroit, concerning an investigation of the Detroit Police Department.

As I found in my Report and Recommendation filed on May 10, 2005, the "actual innocence" issue raised in Petitioner's supplemental brief is without merit, notwithstanding the material submitted to show questionable practices on the part of the Detroit Police Department concerning the arrest, detention and interrogation of witnesses. First, I found that Officer Samuel Quick, who took Petitioner's confession in this case, was not identified as being among the officers involved in the Homicide Section's skullduggery. Second, I

found that whatever occurred during the investigatory phase of Petitioner's prosecution, at trial eyewitness Ponce de Leon Brown positively identified Petitioner. For these same reasons, the memorandum now submitted by Petitioner has no impact on the issues raised, including the actual innocence issue.

The decision whether to allow expansion of the record is within the sound discretion of the Court. *Ford v. Seabold*, 841 F.2d 677, 691 (6th Cir. 1988). Because the submitted material is irrelevant to and has no impact on the reasoning or result of my Report and Recommendation, Petitioner's Motion [Docket #50] is DENIED.

SO ORDERED.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: May 11, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on May 11, 2005.

s/G.K. Wilson
Judicial Assistant